* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: March 19, 2007.
Date of Decision : April 25, 2007.

\+ W.P.(C) 22121-22122/2005 & CM. No. 14495/2005

M/S VED PRAKASH GUPTA & SONS
(HUF) & ANR. ..... Petitioners
Through Mr. J.K. Jain, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY ..... Respondent
Through Mr. Anil Sapra, Advocate.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGMENT

:Dr. S.Muralidhar, J.

1. These writ petitions challenge an order dated 28.9.2005 passed by the Lt. Governor of Delhi in Case No. 157 of 2004. As a result of the impugned order, the Lt. Governor set aside an order dated 1.9.2003 passed by the Appellate Tribunal, DDA allowing the petitioner's appeal and setting aside an order dated 5.6.2000 passed by the Delhi Development Authority (DDA) ordering demolition of the petitioner's property Plot No. 56 in the extended Laldora of village Bhudpur, Delhi

2. On 24.3.1999 the petitioners purchased the property in question by way of a sale deed executed in their favour by the erstwhile owners. On 3.6.1999 a notice under Section 30(1) of the Delhi Development Act, 1957 (Act) was issued to the petitioners asking them to show cause why an alleged illegal construction being raised

on the property by the petitioners should not be demolished. This was followed by a reply by the petitioners and a hearing resulting in an order dated 5.6.2000 passed the DDA directing demolition of the alleged unauthorised construction. The petitioner's appeal to the Appellate Tribunal, DDA was allowed by an order dated 1.9.2003.

3. A further appeal appeal had to be filed thereafter before the Lt. Governor within 30 days i.e. before 1.10.2003. However, the DDA filed an appeal only on 9.6.2004 accompanied by an application under Section 5 of the Limitation Act for condoning the delay of more than 240 days in filing the appeal. The petitioners here resisted that application pointing out that there was no valid explanation for the delay. Thereafter, by a reasoned order dated 11.8.2004 the Lt. Governor dismissed the application for condonation of delay on the ground that there was no satisfactory explanation. As a result, the appeal was also dismissed.

4. After the dismissal of the appeal, the DDA filed an application on 4.9.2004 for recalling the order. The petitioners, in reply to this application, pointed out that the Lt. Governor had no jurisdiction or power to recall or review his earlier order. On 5.1.2005 the petitioners filed an application for deciding this preliminary issue of maintainability of the review petition.

5. By the impugned order dated 28.9.2005 the Lt. Governor disposed of the appeal of the DDA in the instant case along with other appeals. As regards, the DDA's appeal in the instant case, the Lt. Governor condoned the delay in filing the appeal and revived the appeal. He did this without referring to the fact that he had already

dismissed such an application by the previous order dated 11.8.2004. In fact before dealing with the appeal on merits, the Lt. Governor did not deal with the objections of the petitioner and to the fact that he had already earlier dismissed the appeal. The Lt. Governor proceeded to allow the appeal and set aside the order of the Appellate Tribunal. The cases were directed to be remanded to the DDA for issuance of a fresh show cause notice to the petitioner and for taking a fresh decision after hearing them and considering their replies.

6. The principal contention of the petitioners here is that the impugned order tantamounts to a review and recall of the earlier order dated 11.8.2004 and that under the scope of the powers of the Lt. Governor under Section 31D of the Act, there was no power to recall or review an order. It is submitted that unless the power of review is specifically enumerated in the Act, no such power can be exercised. It is submitted that the impugned order should be set aside on this ground alone.

7. When this writ petition was listed for hearing on 22.11.2005, this Court directed notice to issue and formulated the question that arose, viz., whether the Lt. Governor acting as the second appellate authority under the Act had a power of review or not. The second issue identified was whether the Lt. Governor ought to have decided the application for review in the first instance. In other words, could he have proceeded in the matter as if he had all already allowed that application and was required only to again decide the appeal on merits.

8. It is submitted by Mr. J.K. Jain, learned Advocate for the

petitioner, that the power of review of a quasi-judicial statutory authority has to be specifically spelt out in the statute itself and cannot be implied. He placed reliance on the decisions of the Hon'ble Supreme Court in ***H.C. Suman vs. Rehabilitation Ministry Employees Cooperative House Building Society*** (1991) 4 SCC 485, ***Patel Chumibhai Dajibha vs. Narayanrao Khanderao Jambekar*** AIR 1965 SC 1457, and ***Patel Narshi Thakershi vs. Pradyumansinghji Arunsinghji*** AIR 1970 SC 1273.

9. Appearing for the DDA, Mr Anil Sapra, learned Advocate, sought to place reliance on Section 31D (2) read with Section 347-A of Delhi Municipal Corporation Act, 1957(`DMC Act') to contend that where the Appellate Authority exercises the powers of a civil court, such power would also include a power of review. He further submitted that the power of review in such circumstances was not circumscribed by Order 47 Rule 1 of the CPC but was of a wider nature.

10. The position in law as explained in decisions of the Hon'ble Supreme Court is fairly settled. The power of review of a statutory authority exercising judicial or quasi-judicial power is not an inherent power. Unless the statute vesting appellate powers in an authority also specifically enumerates the power of review, such a power cannot be implied or inferred. An implied power of review is available only to Courts of record like the High Court or the Hon'ble Supreme Court.

11. In ***H.C. Suman vs. Rehabilitation Ministry*** (supra) the Hon'ble Supreme Court held (SCC p.503) :

> "It is settled law that a quasi judicial order once passed and having become final cannot be reviewed by the authority passing that order unless power of

> review has been specifically conferred. The quasi judicial order dated August 19, 1985, as seen above, had been passed by the Lt. Governor under section 76 of the Act. No power to review such an order has been conferred by the Act."

Likewise, in ***Thakershi vs. Pradyumansinghji (supra)*** the Hon'ble Supreme Court held (AIR, p. 1275) as under:

> "It is well settled that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order"

12. In order to examine whether the statute here provides for a power of review, the source of power has to be examined. For this purpose the provision of Section 31D of the Act requires to be examined. The said provision reads as under:

> "Section 31D. Appeals against orders of Appellate Tribunal.
>
> (1) An appeal shall lie to the Administrator of the Union Territory of Delhi against an order of the Appellate Tribunal, conforming, modifying or annulling an order of the Authority, officer of the Authority, local authority or competent authority, as the case may be, under this Act.
>
> (2) The provisions of sub-section (2) and (3) of section 31C and the provisions of section 347A of the Delhi Municipal Corporation Act, 1957, (66 of 1957) and the rules made thereunder, shall, so far as may be, apply to the filing and disposal of an appeal under this section as they apply to the filing and disposal of an appeal under the said section 31C.

(3) An order of Administrator on an appeal under this section, and subject only to such order, an order of the Appellate Tribunal under section 31C and subject to such orders of the Administrator, or an Appellate Tribunal, an order of the Authority, officer of the Authority or local authority or competent authority referred to in sub-section (1) of that section shall be final.

Explanation: In sections 30,31, 31A and 31D, "competent authority" in relation to a local authority empowered or authorized to order demolition or stoppage of buildings or works, in accordance with the provisions made by or under the law governing such local authority."

Section 347-A of the DMC Act to which a reference has been made in 31D (2) has to in turn be read with Section 347-C (7) which reads as under:

"Section 347C (7) Every Appellate Tribunal, shall, in addition to the powers conferred on it under this Act, have the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:

(a) summoning and enforcing the attendance of persons and examining them on oath;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copies from any court or officer;

(e) issuing commissions for the examination of witnesses or documents; and

(f) any other matter which may be prescribed by rules, and every proceeding of an Appellate Tribunal in hearing or deciding an appeal or in connection with the execution of its order, shall be deemed to be a judicial proceeding within the meaning of Section 193 and 228

> and for the purpose of Section 196, of the Indian penal Code (45 of 1960), and every Appellate Tribunal shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

13. Even upon a collective reading of the above 2 provisions, it is not possible to agree with the counsel for the Respondent DDA that there is any implied power of review in the Hon'ble Lt. Governor in his capacity as the second appellate authority under the Act. Although he may, by virtue of Section 347C of the DMC Act, exercise similar powers of a civil court, the reference is to particular powers of a civil court. It does not extend to exercising the powers of review. The inescapable conclusion is that there is no specific power given to the Lt. Governor to review or recall his own order.

14. Turning to the facts of the present case there can be no manner of doubt that the Lt. Governor in the impugned order has virtually recalled and reviewed his earlier order dated 11.8.2004 which was, as explained, impermissible in law for him to do. In that view of the matter, the impugned order dated 28.9.2005 is unsustainable in law and is hereby set aside. The order dated 11.8.2004 passed by the Lt. Governor is restored. The writ petition is allowed with no orders as to costs. The application is disposed of.

April 25, 2007 (S. Muralidhar)
dp-ak Judge